



SESSION 3

Contract Overview



OVERVIEW

- Definition: Types of Work
- ESPC vs. Traditional Contracting
- Authorities
- Contract Overview (Sections B, E, F, and I)
- Section H Review
 - Getting Started - Air Force ESPC Procedures
- Summary



ESPC DEFINITION

“The term . . . means contracts that provide for the performance of services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy or water conservation measure”
(Sec. 703, E.O. 13123)



ESPC VS. TRADITIONAL CONTRACTING

- Turnkey approach (Brooks Act)
- Construction inspector or Quality Assurance Evaluator (QAE)
- Performance Specification - Energy Savings
- Long-term contracting authority
 - Agencies should develop new contracting procedures



CONTRACT FORMAT

- Energy Savings Performance Contract (ESPC) is the contract type
 - An ESPC is for the purchase of energy savings
 - ESPC contains elements of services, supplies, A&E, and construction contracts
 - Contract format customized to incorporate provisions from various types of contracts
 - Section B contains three CLINS - two are “Not Separately Priced”
 - Section H critical to successful contract execution



SECTION B - SCHEDULE

- CLIN 0001 = Phase I and is Not Separately Priced
- CLIN 0002 = Phase II and is Not Separately Priced
- CLIN 0003 = Phase III and is the tool for ordering work - the Task Order





CONTRACT OVERVIEW

- The contract is tailored for RESPC
- Section C is the basis for all ESCO reports and task orders (covered in-depth in Session 4)
- Section E has the inspection provisions
 - ESPC is a performance contract for energy savings
- Section F addresses contract performance
 - 25 year Performance Period is for all work
 - Pre-Performance conferences
 - Stop Work
 - Government Delay of Work
- Section G provides for task orders to localize contract administration actions



CONTRACT OVERVIEW(con't)

- Section H customized for ESPC
 - **H-6 Davis Bacon Wage Rates** (Construction)

“... Construction and testing work performed under this contract are subject to the minimum wages requirement of the Davis Bacon Act, ... “
 - **H-7 Service Contract Act Requirements** (Services)

“... Operations and maintenance services under this contract are subject to the requirements of the Service Contract Act of 1965, ... “
 - **H-8 Fire Prevention** (Construction and Services)

The ESCO shall insure that all contract employees know how to report a fire. Contractor personnel shall observe all requirements for handling and storage of combustible supplies, materials, waste, and trash. Contractor employees operating critical equipment shall be trained to properly respond during a fire alarm or fire. Welding shall not be accomplished without prior coordination with the COR and approval of the Base Fire Department.
 - **H-11 Information Concerning Performance and Payment Bonds** (Construction)



CONTRACT OVERVIEW(con't)

- **H-12 Protection of Lien Holder Interest** (Services and Construction)

- Assignment of claims (payments)
- Assignment of contract performance
- Cure / Show Cause notifications

- **H-17 Contractor Payments** (Services)

“... a. The Government will begin making payments to the ESCO beginning the month following the first full calendar month after acceptance of the energy conservation measure by the Government. Payments will be structured . . . so as to divide the ESCO’s share of the guaranteed annual savings into twelve equal, or nearly equal payments. Each year, before the twelfth month’s payment is made, a reconciliation will be performed to ensure the guaranteed savings were achieved or exceeded. If the annual reconciliation reveals a shortfall between the guaranteed savings amount and the actual savings achieved for that year, the ESCO shall, by a single payment in the form of a credit on next monthly invoice, or as otherwise specified by the Contracting Officer pay to the Government the difference. Payments will continue for the period agreed to in the contract task order, up to the remainder of the contract term, except in the case of contract termination for the purpose of default or convenience.



CONTRACT OVERVIEW(con't)

b. Payment will be calculated as shown in the following example:

- (1) ESCO estimates a savings of \$140,000/year, and
- (2) ESCO guarantees a savings of \$120,000/year
- (3) ESCO's monthly payment is determined by:

$$\$120,000 \text{ (guaranteed savings)} \div 12 \text{ months} = \$10,000/\text{month}$$

- **H-18 Governmental Legislation, Law or Other Policies**
“... this is a long-term contract, if and when new governmental legislation, law or policy is enacted . . . such new legislation, law, or policy may, at the Contracting Officer's discretion, be negotiated and incorporated into the contract.
- **H-21 Responsibility for Systems and Equipment** (Construction and Services)
The contractor shall at all times during the term of the contract have full ownership responsibilities of the contractor-furnished systems and equipment.
- **H-22 Material Approval Submittals** (Construction and Services)
- **H-109 REQUIRED INSURANCE** (IAW FAR 28.306(b))



GETTING STARTED

ESPC PROCEDURES

- Written procedures for using Air Force and Army RESPCs
 - Issued by AFCESA as AF Program Manager
 - Provides standardized approach
- Road map for implementing ESPC work
 - Revised as necessary as program evolves
 - Upward reporting of program status

A Step by Step Guide



SUMMARY

- The ESPC definition includes multiple types of work that may be accomplished in one contract vehicle
- ESPC differs from traditional contracting
- Special legislation for ESPC that is implemented by Code of Federal Regulations (CFR)
- Contract Overview
- Section H is critical to success of ESPC



QUESTIONS?

